

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

No. 04-3434

United States of America,

Appellee,

v.

Joshua M. Tilson,

Appellant.

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* Appeal from the United States
* District Court for the Western
* District of Missouri.
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* [PUBLISHED]
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Submitted: October 21, 2004

Filed: July 15, 2005

Before MELLOY, McMILLIAN and COLLOTON, Circuit Judges.

MELLOY, Circuit Judge.

Joshua M. Tilson entered a guilty plea to unlawful transport of firearms and was sentenced to 180 months in prison. The judgment was entered on July 8, 2004, and his deadline to file a notice of appeal was due July 22, 2004. See Fed. R. App. P. 4(b)(1)(A); 26(a)(2). Defendant filed his motion to extend time to file notice of appeal on August 13, 2004. See Fed. R. App. P. 4(a)(5)(A)(ii) (allowing the district

court¹ to extend the time to file a notice of appeal if the petitioner shows “excusable neglect or good cause”). The district court denied the motion.

We review a denial of a motion for extension of time to file a notice of appeal for an abuse of discretion. Gibbons v. United States, 317 F.3d 852, 853-54 (8th Cir. 2003). We find there was no abuse of discretion below because Tilson failed to show excusable neglect or good cause for his filing delay. Further, even if we were to reach the merits of his appeal, Tilson would not be entitled to relief. Tilson seeks to appeal his sentence based on supposed judicial fact-finding in violation of Blakely v. Washington, 124 S. Ct. 2531 (2004). Tilson’s argument is that the district court should not have considered Tilson’s three prior violent felonies in calculating his sentence. However, Blakely does not apply to the fact of a prior conviction. 124 S. Ct. at 2536. The judgment of the district court is therefore affirmed.

¹The Honorable Fernando J. Gaitan, Jr., United States District Court Judge for the Western District of Missouri.